

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Crim. No. 1:14-cr-176

v. :

JOSE JUAN ALBERTORIO- :
GARCIA : Judge Sylvia H. Rambo

M E M O R A N D U M

Before the court is Defendant Jose J. Albertorio-Garcia's ("Albertorio-Garcia") motion for the return of property pursuant to Federal Rule of Criminal Procedure 41(g). (Doc. 106.) Albertorio-Garcia seeks the return of money seized by the Pennsylvania State Police Bureau of Criminal Investigation South Central Strike Force out of Harrisburg, Pennsylvania during an undercover investigation. Albertorio-Garcia, who resided in Philadelphia, Pennsylvania, supplied quantities of heroin to a confidential informant for distribution in Harrisburg. He was convicted on November 4, 2015 of 4 counts of distribution and possession with the intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1) and possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. § 924(c). In his motion, Albertorio-Garcia seeks the return of \$2,922.00 in cash taken off his person pursuant to a search incident to his arrest; proceeds of \$64.75 in a Wells Fargo bank account; and proceeds of \$8,660.17 in a Wells Fargo bank account.

I. Discussion

On February 1, 2017, the government filed a response (Doc. 109) to Albertorio-Garcia's motion, and on February 13, 2017, the government filed a supplemental response (Doc. 111). The supplemental response attaches copies of documents filed in the Philadelphia Court of Common Pleas showing that on October 30, 2014, a Petition for Forfeiture and Condemnation, along with a Notice to Answer, was filed. (Doc. 111-1.) The caption of that action reads, "*Commonwealth of Pennsylvania v. \$2,922.00 U.S. Currency; Two (2) Wells Fargo Bank Accounts Containing \$64.75 and \$8,660.17; Three (3) Cell Phones; One (1) Apple I-Pad.*" (*Id.*) The Petition covers the monies Albertorio-Garcia seeks to have returned in his motion before this court.

Albertorio-Garcia knew about this pending petition for forfeiture at the time he filed for the return of property before this court. (*See* Doc. 111-3.)

The Philadelphia court has not yet ruled on the Petition for Forfeiture because Albertorio-Garcia has an appeal of his criminal case pending before the Third Circuit.

The proper jurisdiction for the decision as to Albertorio-Garcia's property is in the Philadelphia Court of Common Pleas because the property was seized by agents of the Pennsylvania State Police Bureau of Criminal Investigation

South Central Force and the property is in their possession. The United States government does not have the property in its possession.

Accordingly, the motion will be denied.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: February 16, 2017